

REMARKS

The present Amendment is in response to the Office Action mailed March 7, 2007, in the above-identified application.

As an initial matter, Applicants acknowledge and appreciate the Examiner's allowance of claim 18 and indication that claims 4-7 and 9-11 contain allowable matter.

In the present Amendment, Applicants have amended claim 1 as noted above. Claims 4, 5, 8, and 10, which depend from claim 1, have also been amended. Applicants have also amended independent claim 12, and claim 16 that depends from claim 12. Claim 15 has been canceled. In addition, Applicants have added new claim 21, which depends from claim 16. The limitations found in new claim 21 are fully supported by the originally filed specification and add no new matter.

The Examiner rejected claims 5-7 under 35 U.S.C. §112, second paragraph, as being indefinite. Specifically, in claim 5, lines 6 and 8, the Examiner asserts that the term "the shaft" lacks proper antecedent basis. In response, Applicants respectfully disagree with the Examiner and note that claim 5, line 2, provides antecedent basis for the term "the shaft" by reciting "a shaft." In view of the above, Applicants respectfully assert that claim 5 satisfies the requirements of 35 U.S.C. §112, second paragraph, and that claims 6 and 7 also satisfy the requirements of the patent law by virtue of their dependence from claim 5.

The Examiner rejected claims 1, 3, 8, 12, and 15-17 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,431,658 to Moskovich. In response to the Examiner's rejection, Applicants have amended independent claims 1 and 12 to clearly distinguish the claims over Moskovich. Independent claim 1 is unanticipated by Moskovich because the reference neither discloses nor suggests an instrument including a holder

adapted to hold an implant during insertion with "the holder including a plurality of arms having distal ends and extensions hingedly connected to the distal ends of the plurality of arms."

Independent claim 12 is unanticipated by Moskovich because the reference neither discloses nor suggests an instrument for inserting an implant between vertebral bodies with "a guard including a shaft having a proximal end and a distal end, the shaft tapering inwardly from the distal end to the proximal end thereof and being adapted to engage the arms of the holder."

As it is believed that all of the rejections set forth in the Office Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested Amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: May 16, 2007

Respectfully submitted,

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